

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:) Chapter 11
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.) Hon. Basil H. Lorch III

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH PAUL KROPF D/B/A K&K FARMS**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee ("Trustee") for the bankruptcy estate ("Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, respectfully moves the Court to approve a compromise and settlement of claims between the Trustee and Paul Kropf d/b/a K&K Farms ("Kropf"). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") on December 6, 2010 ("Petition Date"). The Court entered the *Order For Relief in An Involuntary Case and Order to Complete Filing* [Docket No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 102] approving the *United States Trustee's Application for an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 98] pursuant to 11 U.S.C. § 1104.

3. The Trustee filed the *Trustee's Chapter 11 Plan of Liquidation* on July 23, 2012 [Docket No. 1255] and the *First Amended Chapter 11 Plan of Liquidation* on October 26,

2012 [Docket No. 1490] (“Plan”). The Court entered an Order on December 17, 2012 [Docket No. 1644] (“Confirmation Order”) confirming the Plan.

4. The Trustee contends that on or about November 2, 2010, Debtor delivered 72 steers (“Kropf Cattle”) from Kropf’s farm in Arkansas to the feedyard located at 500 South Taylor in Amarillo, Texas that is operated by Friona Industries, L.P. (“Friona”) or its affiliate. At the time Debtor took possession of the Kropf Cattle, the selling price agreed with Debtor was \$55,579.96 based on the steers total weight after loading.

5. Friona interpled the sum of \$56,440.54 with the Court for the Kropf Cattle that it received (“Interpled Funds”) in connection with Adversary Proceeding No. 11-59093 (“Adversary”).

6. The Trustee contends that the Interpled Funds are property of Debtor’s bankruptcy estate. Kropf contends that the Interpled Funds are not property of the estate because Debtor received the Kropf Cattle as a bailment and Kropf never conveyed title to Debtor.

The Settlement

7. The Trustee has negotiated a settlement of the claims made by Kropf to the Interpled Funds related to the Kropf Cattle on the terms set forth in the Settlement Agreement and Mutual Release attached hereto as Exhibit A (“Settlement Agreement”).¹ Pursuant to the Settlement Agreement, the Trustee and Kropf have agreed to divide the

¹ During 2014, the Trustee settled preference claims with Amos Kropf. See Settlement Agreement and Mutual Release (July 7, 2014) attached at Exhibit A to Motion to Approve Compromise and Settlement with Amos Kropf Pursuant to Rule 9019 [Dkt. 2618 filed on July 30, 2014]. Paul and Amos Kropf are relatives who are involved from time to time in various cattle transactions. The interpled cattle proceeds at issue in the settlement that is the subject of today’s Motion are unrelated to the claims the Trustee and Amos Kropf released previously. For the avoidance of any doubt, however, the Settlement Agreement and Mutual Release attached to this Motion includes all remaining claims of any nature that Paul Kropf, *Amos Kropf* or the Trustee may have against one another concerning the debtor’s estate, the Trustee, or the Trustee’s professionals.

Interpleaded Funds, with Kropf receiving \$30,000.00 of the Interpleaded Funds, and the Trustee receiving the remaining \$26,440.54 of the Interpleaded Funds, plus all accrued interest. The parties shall release and waive all other claims related to the Kropf Cattle.

8. In accordance with the terms of the Plan, the \$26,440.54 of Interpleaded Funds and interest received by the Trustee shall become part of the Collateral Fund (as that term is defined in the Plan).

Basis for Relief

9. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

10. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found, 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

11. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the Estate. The relative rights in and to the Interpleaded Funds is disputed and would require litigation and trial expenses to resolve. Accordingly, continued litigation with Kropf would result in significant expenses and delay and could result in a smaller recovery to the Estate.

12. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely filed

objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit A and grant the Trustee all other just and proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2016, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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